



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

SEP 27 1996

AGENDA ITEM

For Meeting of: OCT 3 1996

September 25, 1996

MEMORANDUM

TO The Commission

THROUGH John C. Surina  
Staff Director

FROM Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Susan E. Propper  
Assistant General Counsel

SUBJECT Draft AO 1996-11

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 3, 1996.

Attachment

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# DRAFT

1 ADVISORY OPINION 1996-41

2  
3 James R. Bayes  
4 Wiley, Rein and Fielding  
5 1776 K Street, N.W.  
6 Washington, D.C. 20006

7  
8 Dear Mr. Bayes

9  
10 This responds to your letters of September 13 and 19, 1996, requesting an  
11 advisory opinion on behalf of A H Belo Corporation ("Belo"), a corporation which owns  
12 and operates seven television stations in six states.<sup>1</sup> Your request concerns the  
13 application of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the  
14 Act"), and Commission regulations to Belo's proposed production and broadcast of  
15 television programs featuring candidates for federal and state office.

16 You state that Belo plans to produce a series of television programs in  
17 conjunction with local PBS affiliates featuring the views of candidates for the United  
18 States Senate, House of Representatives and Governor in each area served by a Belo  
19 station. The House races included will be those from districts representing the primary  
20 viewing audience in the geographic area reached by the stations' broadcast signals.  
21 When two or more candidates are seeking the same seat, Belo will select candidates to  
22 participate based on "pre-established objective criteria for public support and  
23 credibility." Belo may invite participation by more than two candidates seeking the same  
24 seat if they meet these criteria.

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<sup>1</sup> These stations are WFAA-TV (ABC) in Dallas, Texas, KHOU-TV (CBS) in Houston, Texas, KIRO-TV (UPN) in Seattle, Washington, KXTV (ABC) in Sacramento, California, WWL-TV (CBS) in New Orleans, Louisiana, WVEC-TV (ABC) in Hampton Norfolk, Virginia, and KOTV (CBS) in Tulsa, Oklahoma. You also state that Belo publishes *The Dallas Morning News* and several other smaller daily newspapers.

1 For each race included in a program, the Belo station will invite the candidates to  
2 its studios. A Belo news division interviewer will introduce each candidate and then ask  
3 each candidate to respond to the same question.<sup>2</sup> Candidates will have an uninterrupted  
4 five minutes to reply. Each candidate segment will be taped separately; these segments  
5 will then be combined by the station's news division into a program to be broadcast by  
6 the local Belo station and the PBS outlet in that market. Candidates will not have an  
7 opportunity to reply to statements made by their opponents.

8 You indicate that the stations intend to run the candidates' answers in their  
9 entirety, subject only to the five minute limit for each response. The order of appearance  
10 for candidates seeking the same office will be determined by lot. Each program is  
11 expected to be one hour in length although, in the larger markets, the number of  
12 candidates involved may require that two episodes be produced. In such cases, all  
13 candidates competing for the same office would always appear in the same broadcast.

14 Belo plans to schedule the broadcast of these programs in time periods normally  
15 devoted to news and public affairs programming, and will run the program with no  
16 commercial interruptions. It also intends to make the taped program available to local  
17 cable operators and radio stations, in addition to the local PBS outlet.

18 You ask whether, under these circumstances, the proposed production and  
19 broadcast of these television programs is consistent with the news media exemption of  
20 the Act. 2 U.S.C. §431(9)(B)(i).

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<sup>2</sup> The question will be developed by Belo, in consultation with the PBS stations. There will be no input by the candidates or their agents.

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1 Under section 441b, a corporation is prohibited from making contributions or  
2 expenditures in connection with a Federal election. 2 U.S.C. §441b. However, the  
3 FECA exempts from the definition of "expenditure"  
4 any news story, commentary, or editorial distributed through the  
5 facilities of any broadcasting station, newspaper, magazine, or  
6 other periodical publication, unless such facilities are owned or  
7 controlled by any political party, political committee, or candidate.  
8 2 U.S.C. §431(9)(B)(i). See also, 11 CFR 100.7(b)(2) and 100.8(b)(2).

9 To qualify for this exemption, the Commission must first find that Belo is a press  
10 entity as described by the Act and regulations. See Advisory Opinion 1996-16 and  
11 opinions and cases cited therein. Furthermore, in previously applying the press  
12 exemption to candidate appearances, the Commission has cited two criteria, based on the  
13 statutory exemption, that would be relevant to determining the scope of the press  
14 exemption. These are (1) whether the press entity is owned by the political party or  
15 candidate and (2) whether the press entity is acting as a press entity in performing the  
16 media activity. Advisory Opinion 1982-44 (citing *Reader's Digest Association v.*  
17 *Federal Election Commission*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981)).

18 Belo's seven network-affiliated stations appear to be broadcasters with an active  
19 involvement in local news coverage. Your request notes that Belo is "not owned or  
20 controlled by a political party, political committee, or candidate". Moreover, in  
21 producing these programs, Belo proposes to create and cover a news event in which  
22 candidates for Federal office appear and answer a pre-determined question posed by a  
23 news division interviewer under circumstances controlled by the broadcaster. For

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1 example, each candidate will have a limited amount of time in which to answer the  
2 question. These answers will be aired without editing or interruption in a program  
3 containing the responses of other candidates running for the same seat. In addition, the  
4 programs will run during time periods normally devoted to public affairs and news  
5 programming. Based on the foregoing, the Commission concludes that Belo, through its  
6 owned and operated stations, is a press entity that will be acting as a press entity in the  
7 above proposal.<sup>3</sup> The production and broadcast of the programs you have proposed  
8 would therefore be permissible under the Act

9 This conclusion is not altered by your statement that Belo intends to broadcast the  
10 responses of all candidates who participate in its program, even if one or more invited  
11 candidates decline to appear.<sup>4</sup> Since Belo's program comes within the press exemption,  
12 it is not subject to the Commission's candidate debate regulations. Under those  
13 regulations, a staging organization can only avoid a prohibited corporate contribution if  
14 two or more candidates seeking the same office appear in a face-to-face confrontation.  
15 See 11 CFR 110.13 and Advisory Opinion 1986-37.

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<sup>3</sup> You note that the Federal Communications Commission recently "concluded that a similar proposal met its standard for 'on the spot coverage of a bona fide news event.' See Fox Broadcasting Co., et al., FCC 96-355 (Aug. 10, 1996)." That ruling concerned proposed programming providing the major presidential candidates with uninterrupted broadcast time. One of the proposals, submitted by Fox, is similar to your request in that it involved posing the same set of questions to each of the presidential candidates who met certain criteria and broadcasting their time-limited responses back to back. The FCC determined that the proposals at issue, including that offered by Fox, constituted "on-the-spot coverage of a bona fide news event", but limited the application of its decision to proposals involving presidential candidates. The FCC declined to state whether these proposals, if applied to programs involving Congressional or Senatorial candidates, would meet this test. However, since the Commission has concluded that your proposal would come within the Act's press exemption, it is unnecessary to consider the implications of a possible FCC determination concerning this activity.

<sup>4</sup> You state that, if any candidates decline to appear, the station will include in its broadcast "the responses of any and all participating candidates, noting if necessary that others were offered an opportunity to participate in the program but were unable to do so."

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